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DARBY & DARBY PC
SCHWEGMAN, LUNDBERG, WOESSNER

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MAY 29 2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

)
U.S. Patent No.: 6,602,911) Group Art Unit: 1614
Issued: August 5, 2003) Examiner: Rebecca Cook
For: METHODS OF TREATING)
FIBROMYALGIA, CHRONIC)
FATIGUE SYNDROME AND PAIN)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION OF GARY J. SPEIER

I, Gary J. Speier, hereby declare as follows:

1. My name is Gary J. Speier, and I am a shareholder of the law firm of Schwegman, Lundberg & Woessner, P.A. in Minneapolis, MN. I am registered to practice before the U.S. Patent and Trademark Office.
2. From June 2002 until February 2003, I was the attorney at Schwegman, Lundberg, Woessner & Kluth, P.A. ("Schwegman") prosecuting U.S. Patent Application Nos. 10/028,547 ("the instant application") and 10/014,149 ("the '149 application") before the U.S. Patent and Trademark Office.
3. On June 4, 2002, Schwegman replaced Cooley Godward, L.L.P as counsel of record for both the instant and '149 applications. On November 5, 2002, a Patent Cooperation Treaty ("PCT") application was filed claiming benefit of the '149 application. On December 19, 2002, a PCT application was filed based on the instant application, claiming priority only to the instant application.

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4. I was initially unaware that non-publication requests had been filed for both the instant application and the '149 application. A due diligence assessment brought to light that a non-publication request had been filed for the '149 application. Upon learning this, I realized that the statutory period for giving notice to the Office of the filing of the corresponding PCT application had lapsed on December 20, 2002, 45 days after the PCT filing date of November 5, 2002. I therefore immediately, on February 3, 2003, filed a Petition to Rescind Non-publication Request and a Petition to Revive the '149 application under 37 C.F.R. 1.137(b). The Office granted the Petition to Revive on February 21, 2003.

5. The same due diligence assessment also revealed that a non-publication request had been filed for the instant application. Based on the filing date of the PCT application claiming benefit to the instant application, I determined that notice to the Office of the PCT filing was due by February 3, 2003, 45 days after the PCT filing date of December 19, 2002. On the basis of this understanding, I timely filed A Petition to Rescind Non-publication Request with the Office on February 3, 2003.

6. I interpreted 35 U.S.C. 122(b)(2)(B)(ii) as requiring notice to the Office 45 days after the filing of the PCT application corresponding to the instant application. Because a Petition to Rescind Non-publication Request was filed within this time frame, I believed that notice to the Office of the PCT filing was no longer required and the instant application would continue pendency after February 3, 2003.

7. After February 3, 2003, power of attorney was changed from Schwegman to Holland & Knight, L.L.P. for both applications.

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8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 27 day of May 2008 at 11:23pm


Gary J. Speier
Reg. No. 45,458